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## China, Peoples Republic of

### Agricultural Situation

### Protecting Plant Varieties in China: Alternatives

### 2007

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**Report Highlights:**

There are three methods to protect the intellectual property of plant products in China: 1) trademark, 2) method patent, and 3) new plant variety right.

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## Registration Procedures for Plant Product

There are three methods to protect the intellectual property of plant products in China: 1) trademark, 2) method patent, and 3) new plant variety right.

### Registering a common trademark for a plant product in China

The procedures for registering a common trademark for a plant product are consistent with common trademark registration in general. Instructions can be found in the FAS/Beijing IPR Registration Manual. They are:

- Design and Select a Mark,
- Locate and Select a Registration Agency,
- Complete and Submit Required Documents,

A Chinese trademark agency or IPR law firm can help prepare the required documents.

Required documents include

- Trademark Registration Application,
- Power of Attorney,
- Copy of an Identity Card or passport, and
- Six copies of Trademark Sample.

The official fees for filing one trademark application for registration in one international class are RMB? 1000 (US\$ 128.90) covering 10 goods/service items. For each good/service item exceeding 10 in one application, additional official fee RMB? 100 (US\$ 12.90) would occur.

The additional agent's service fees for filing one trademark in one class would be about US\$ 300-350. These fees do not include costs for conducting trademark search, reporting publication and registration, and dealing with any official action in the process of getting a registration, like litigating an opposition challenge.

### Applying for a patent in China

Any person or entity is qualified to apply for a patent in China. There are three patent types under Chinese Patent Law: 1) utility patent, 2) design patent, and 3) an invention patent.

Registering a utility model or design patent requires the application go through three stages: 1) File Application, 3) Preliminary Examination, and 4) Grant of Patent.

Registering an invention patent requires the application goes through five stages: 1) File Application, 2) Preliminary Examination, 3) Publication, 4) Substantial Examination, and 5) Grant of patent.

The procedure for obtaining a patent goes as follows:

- 1) File Application** - A Chinese patent agency or IPR law firm will help prepare and submit the following required documents: (i) patent application form, (ii) patent specification, (iii) drawing attachments of patent specification, (iv) abstract of patent specification, and (v) patent request.
- 2) Preliminary Examination** – The State Patent Office will examine the application documents.
- 3) Publication** - After the preliminary examination of the documents, if the application satisfies the requirements provided in Patent Law, it will be published in the Patent Gazette 18 months after the initial filing date.
- 4) Substantial Examination** – Substantial Examination requires a separate application after the preliminary examination is published in the Patent Gazette. The State Patent Office will complete the substantial examination within 3 years. The application will be deemed withdrawn if the applicant does not apply for substantial examination.

- 5) Grant of Patent** – If the State Patent Office deems the patent valid, it will grant the patent, issue patent letter, register, and publish the patent in the Patent Gazette. Invention patents are valid for 20 years while utility model and design patents are valid for 10 years from the filing date. Patents cannot be renewed.

The official fees for a patent invention include a filing fee of RMB 950 and an examination fee of RMB 2500. The official fee for a utility model or design patent is a filing fee of RMB 500.

The agent's service fee for the invention patent are between \$800 and \$1200; for utility model patents the range is \$700-1000; for the design patent the cost is approximately \$600. These fees do not include costs for translation or any action within the patent process.

Non-Chinese individuals or entities must appoint a Chinese patent agency or IPR law firm to represent the applicant. There is a list of patent agencies available on the State Intellectual Property Office website at:

[http://www.sipo.gov.cn/sipo/zwgs/gg/200604/t20060411\\_80088.htm](http://www.sipo.gov.cn/sipo/zwgs/gg/200604/t20060411_80088.htm)

### **Applying for a new plant variety in China**

New plant varieties cannot be patented but can be protected under the new plant variety protection law. Any person or entity can apply for a new plant variety right in China.

The procedures of new plant variety rights include: 1) Locating and Selecting a Plant Variety Right Agency, 2) Completing and Submitting the Required Documents, 3) Acceptance of the Application by the Agricultural Office, 4) Preliminary Examination, and (6) Substantial Examination and Issuing the Certificate. The procedure to obtain a patent goes as follows:

- 1) Locate and Select a Plant Variety Right Agency** - A foreign applicant must be represented by a Chinese agency authorized by the Ministry of Agriculture.
- 2) Complete Required Documents** - The agent will assist the applicant to complete the application form and submit them to the Ministry of Agriculture, including identifying new plant variety specifications. The application requires new plant variety photos.
- 3) Agricultural Office Acceptance** – The office will provide the application a Notice of Acceptance of the applicant's application within one month of submission.
- 4) Preliminary Examination** - The examination department will notify the applicant of its acceptance, will publish it in the Gazette, and request a payment of the substantial examination fees within 3 months from Agricultural Office Notice of Acceptance.
- 5) Substantial Examination and Issuance of the Certificate** - If the application passes the substantial examination, the examining department will issue a new plant variety right certificate and publish it in the Gazette. New plant variety rights for liana, forest tree, fruit tree and ornamental tree are valid for 20 years; all other plant varieties are protected for 15 years. Plant variety rights cannot be renewed.

The fees include an application fee of RMB 1800, examination fee of RMB 4600, and an Estimated attorney fee of \$1800.